IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-09-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

WRIT APPEAL NO.367 OF 2007
and
M.P.NOs.1 & 2 OF 2007

1. Eka Ratchagar Sabai Higher
   Secondary School,
   rep. by its Correspondent,
   Salaiputhur, Asirvathapuram (PO)
   Tuticorin District.

2. Smt.D. Sumathi Mispa Maharani
   Eka Ratchagar Sabai Higher
   Secondary School,
   Salaiputhur, Asirvathapuram (PO)
   Tuticorin District. .. Appellants/1st Respondent/
   3rd Respondent

Vs.

1. K. Sumathi
   W/o.A. Sakthivel

2. The Chief Educational Officer,
   Tuticorin - 1. .. Respondents/petitioners
   2nd Respondent

Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge in W.P.No.11120 of 2001 dated 2.1.2007. Presented under Article 226 of the constitution of India to issue a writ of mandamus directing the respondents 1,2 to promote the petitioner as P.G.Assistant in Tamil in the first respondent school forthwith award costs.

For Appellants : Mr.M. Joseph Thatheus Jerome

For Respondent-1 : Mr.D. Hariparanthaman

Respondent-2 : Mr. Viswanathan, AGP

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J U D G M E N T

P.K. MISRA, J

First Appellant, namely, Eka Ratchagar Sabai Higher Secondary School, is a religious minority aided school. First respondent joined such school on 1.7.1982 as Tamil Pandit, which was in B.T. Assistant Cadre. Subsequently, the High School was upgraded as Higher Secondary School. In 2001, on retirement of the Headmaster, Mrs. Patti Jeeva Malar, who was working as a Post Graduate Assistant in Tamil, was appointed as Headmistress with effect from 1.6.2001. The dispute in the present appeal relates to filling up of consequential vacancy in the post of P.G. Assistant in Tamil. At that stage, Appellant No.2 was appointed by direct recruitment as P.G. Assistant in Tamil. According to the case of Respondent No.1, such appointment of Appellant No.2 as P.G. Assistant in Tamil is in violation of Rule 15(4)(ii)(i) of Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. 1.1 Respondent No.1 filed W.P.No.11120 of 2001 seeking for a direction to promote her as P.G. Assistant in Tamil. The main contention raised in the writ petition was to the effect that in view of the provisions contained in Rule 15(4), the school authorities had no jurisdiction to appoint P.G. Assistant in Tamil by direct recruitment ignoring the claim of such writ petitioner, who is otherwise eligible and meritorious.

1.2 A counter affidavit was filed by Appellant No.1 school, wherein it was contended that the school being a minority school, Rule 15 of Tamil Nadu Recognised Private Schools (Regulation) Rules was not applicable and the school has discretion to appoint suitable candidate through the process of direct recruitment. It was further stated that at the time of selection of Appellant No.2, the writ petitioner was also given opportunity to appear at the interview so that her merit could be assessed, but she refused to attend the interview. It was further stated that the writ petitioner obtained M.A. Degree through correspondence course, whereas the candidate selected was a regular Post Graduate and the present Appellant No.2 was more meritorious than the present Respondent No.1.

1.3 Appellant No.2 also filed a separate counter.

1.4 Learned single Judge has allowed the writ petition and quashed the appointment of Appellant No.2 and also issued a direction directing the school authorities to appoint the writ petitioner retrospectively with effect from 1.6.2001, but without payment of difference of salary for the past period. Such judgment is being challenged jointly by the school as well as the person who had been appointed directly as P.G. Assistant in Tamil, in this Writ Appeal.

2. Learned counsel appearing for the appellants has raised two contentions. It is first contended that the appellant school being a minority school, the provisions of Rule 15(4)of Tamil Nadu Recognised Private Schools (Regulation) Rules, hereinafter referred to as "the Rules" should not be applied as such Rule affect the discretion of the Management of the minority school in the matter of appointment of teachers. The other contention is to the effect that even if Rule 15

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(4) is applicable, the appellant school had given opportunity to the writ petitioner (Respondent No.1) to appear in the interview for the purpose of assessment of her merit and since she declined to attend such interview, thereby making it impossible for the Management to assess her merit, she is precluded from challenging the decision of the Management.

3. Rule 15(4) is to the following effect :-

> "15(4)(i) Promotion shall be made on grounds of merit and ability, seniority being considered only merit and ability are approximately equal.
>
> (ii) Appointments to the various categories of teachers shall be made by the following methods:-
>
> (i) Promotion from among the qualified teachers in that school.
>
> (ii) If no qualified and suitable candidate is available by method(i) above, -
>
> (a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;
>
> (b) Appointment of teachers from any other school;
>
> (c) Direct recruitment."

4. Such Rule has been interpreted by a Division Bench of this Court in the decision reported in 2005(1) CTC 8 (THE SECRETARY, SALIAR MAHAJANA HIGHER SECONDARY SCHOOLS, ARUPPUKOTTAI v. G. SUBBURAJ AND OTHERS), wherein it has been held that appointment of outsider can be made only when no qualified and suitable teacher is available in the school.

5. The main question is, however, regarding the applicability of Section 15(4) of the Rules to the minority schools. Learned counsel for the appellants has relied upon several decisions of the Supreme Court in support of his contention that in view of the provisions contained in Article 30(1) of the Constitution of India, the Management of the school has a right to appoint Headmaster, teacher and other staff, of course keeping in view the minimum qualification prescribed but, such discretion cannot be curtailed by making provision regarding appointment of such persons in a particular manner. Particularly he has placed reliance upon the decision of the Supreme Court reported in (2007) 1 SCC 386 (THE SECRETARY, MALANKARA SYRIAN CATHOLIC COLLEGE v. T. JOSE & OTHERS).

6. Before considering the decision of the Supreme Courts, it would be appropriate to notice various decisions of the Madras High Court. In the decision 1990(I) MLJ 284 (D. ETHIRAJ v. STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF EDUCATION & OTHERS), relied upon by the learned counsel for the appellants, the learned single Judge observed:-

> "10. The contention of learned counsel for the petitioner is that the rules framed by the Government under Section 19 of the Act will apply to Minority Institutions also and whoever is the appointing authority, has to follow such rules. That question does not arise in view of the express language of rule 15. the said rule refers only to appointments by the

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School Committee. The rule does not refer to appointment by any other authority. Every sub-rule in rule 15 refers only to the School Committee. The provision relating to appeal in sub-rule (4A) of Rule 15 refers only to an order issued or decision taken or direction given under sub-rule (4). Sub-rule (4) in turn refers only to the appointment by the School Committee. Consequently, the qualifications or conditions prescribed in Rule 15 of the Rules for appointment of teachers and the provision relating to appeal against such appointment will not come into play if an appointment is made by the Educational agency or any authority other than the School Committee. The rule can be invoked only in the case of appointments made by the School Committee. In view of the judgment of the Division Bench in W.P.No.4478 of 1974 etc., it is not open to any party to contend that in the case of minority institutions also, appointments of teachers or other persons shall be made only by the School Committees and not by any other authority."

7. A question similar to present dispute arose in W.P.No.16914 of 1998 disposed of on 8.9.1999, wherein the leaned single Judge categorically held that Rule 15(4) of the Rules is also applicable to minority school. It was observed therein :-

"97. In the foregoing circumstances while following the later pronouncement of the Apex Court and the Division Bench judgment of this court in W.A.No.1179, 242 of 1993 etc., in S. Sundaram Vs. The Secretary CSI Diocese, Madras and others decided on 6.9.1994 the decision in D. Singarayan and others Vs. Govt., of T.N made in W.P.No.6607 of 1991 which is dated 5.9.1995 the decision of Jayasimha Babu, J., in Sham Dr Vs. The Commissioner of Collegiate Education (1998 (1) CTC 609 = 1999-2-L.W.217) as well as the above referred Supreme Court cases this court holds that the enforcement of rules or regulations relating to recruitment and promotion of teachers other than Headmaster/Headmistress in other words implementation of Rule 15(4)(i)(ii) in no way violates the constitutional guarantees, nor there is any infraction of Article 30(1) of the Constitution.

98. Hence the Court holds that Rule 15(4)(ii) of the Rules will apply to all kinds of minority schools either linguistic or religious institutions as well as promotions or appointments are required to be made only in conformity with the statutory provision. It is only in respect of Headmaster/Headmistress as held by the Apex Court in N. Ammad Vs. The Manager (1998(6) SCC 674 = 1999-2-L.W.52) a selection is open to the management of such minority institution and only with respect to appointment of Headmaster alone the violation of Article 30(1) if any could be comprehended and in no other appointment promotion etc., even in a minority school which receives full grant.

99. In the circumstances with due respect to the Learned Judges of this court who have taken the view that Rule 15(4)(ii) has no application, I beg to differ from them in the light of the later Division Bench Judgment as well as the pronouncement of the Apex Court referred to above. As such this court is of the view that Rule 15(4)(i)(ii) is

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applicable even to minority institutions and the promotions even in a minority school has to be made in compliance with the provisions of the Tamil Nadu Private Schools (Regulation) Rules 1974. Merely because there is no school committee there is no reason to deny the statutory protection, promotion and other conditions of service identical to all aided schools to minority schools.

100. Therefore in the light of the said legal position it follows that the appointment of teachers in the 4th respondent school shall be made by following the methods stipulated in Rule 15(4)(ii) of the Tamil Nadu Private Schools (Regulation) Act, 1973. It may be that there may not be a school committee and that the provisions with respect to the formation of school committee may not apply but the appointment of promotion to various categories of teachers is required to be made by following the methods prescribed in the said rule. Any deviation would result in frustration among the teachers employed in the minority schools who are also being paid on par with the teachers employed in the aided institutions as well as institutions run by the State Government."

8. Subsequently, a similar question was dealt with by the very same learned single Judge in the decision reported in 2003 Writ L.R. 304 (M. CHELLADORAI v. JOINT DIRECTOR OF SCHOOL EDUCATION (HIGHER SECONDARY), CHENNAI 6 AND 3 OTHERS). Such writ petition was filed by an inservice teacher seeking cancellation of appointment of a BT Assistant. The petitioner therein was working as a Secondary Grade Assistant and subsequently acquired degree of B.A., M.A., in History and B.Ed. The person, who was selected as BT Assistant in the minority aided school, was working as a Laboratory Assistant. One of the contentions was relating to applicability of Rule 15(4). It was observed :-

"21. ... The question whether Rule 15(4) is enforceable against a minority school was considered by this court in W.P.No.16914 of 1998 (Mercy Matilda Vs. The Director of School Education and others), dated 8.9.1999. After analysing the entire case law as well as the pronouncement of the Apex Court, it was held that Rule 15(4) will apply to all kinds of minority schools either linguistic or religious institutions as well as promotion or appointments and more so in respect of Schools which receive grant."

Referring to the earlier decision in writ petition.No.16914 of 1998 and the decision of the Supreme Court in TMA PAI FOUNDATION's case, it was observed:-

24. In the foregoing circumstances, while following the earlier Judgment of this Court as well as the law laid down by the Apex Court, as well as that of larger bench in TMA Pai Foundation's case, this Court answers the first point in favour of the writ petitioner. The second point is answered holding that the petitioner is entitled to be promoted, as the petitioner alone is in the feeder category and not the 4th respondent. On the third point also this Court holds that Rule 15(4) could very well be pressed into service or enforced

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by the petitioner as against the third respondent school, which is a minority institution in view of the binding pronouncement of the Apex Court.

...

"26. The reliance placed upon by Mr.R. Paul and Mrs.R.T. Shyamala, learned counsel on various pronouncements, in my considered view, will have no application or no longer good law in view of the later pronouncement of the Supreme Court in TMA Pai Foundation's case. "

9. Appeal against the said decision in W.A.No.422 of 2003 was dismissed by order dated 31.1.2003.

10. Learned counsel appearing for the appellants submitted that these two decisions of the learned single Judge do not reflect the correct position of law and the enforcement of Rule 15(4) in the minority aided schools would be in direct infraction with the fundamental rights guaranteed under the Constitution. It has been submitted by him that even though reference has been made to TMA PAI FOUNDATION's case in such decision of the learned single Judge, relevant portions of such decision have not been considered. Learned counsel further submitted that at any rate in view of the latest decision of the Supreme Court reported in (2007) 1 SCC 386 (THE SECRETARY, MALANKARA SYRIAN CATHOLIC COLLEGE v. T. JOSE & OTHERS), any other view expressed by the Madras High Court to the contrary must be taken to be impliedly over-ruled.

11. In the aforesaid decision, the question was relating to the post of Principal in a Minority Aided College. A contention was raised that in view of the provisions contained in Section 57(3) of the Kerala University Act, 1974, seniormost incumbent should have been appointed. The contention on behalf of the Management was to the effect that since the Management was a minority institution, such provision in the Act, which has the right to establish and administer educational institutions of their choice, the right under Article 30(1) was violated. The Kerala High Court held that Section 57(3) would apply to minority institution also and the seniormost from among the eligible and fit lecturers should be appointed as Principal. On the basis of the aforesaid conclusion, appointment of the Principal, who was not the seniormost among the eligible lecturers, was quashed. Such order was challenged by the incumbent. The High Court purported to have relied upon TMA PAI's case (2002 (8) SCC 481)and held that Section 57(3) providing appointing of Principal on the basis of seniority-cum-fitness was valid and binding on minority institutions.

The Supreme Court proceeded to consider the matter by posing the following two questions:

"(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State.

(ii) Whether the rights to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, Section 57(3) of the Act would violate Article 30(1) of the Constitution of India."

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The Supreme Court after referring to several earlier decisions of the Supreme Court such as (1970)2 SCC 417 (STATE OF KERALA v. VERY REV. MOTHER PROVINCIAL), (1974) 1 SCC 717 (THE AHMEDABAD ST. XAVIER'S COLLEGE SOCIETY v. STATE OF GUJARAT), (1986) 4 SCC 707 (FRANK ANTHONY PUBLIC SCHOOL EMPLOYEES' ASSOCIATION v. UNION OF INDIA) and TMA PAI FOUNDATION's case (supra), observed :-

> "17. In T.M.A. Pai (supra) this Court made it clear that a minority institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But all conditions that have relevance to the proper utilisation of the aid by an educational institution can be imposed. The High Court, however, wrongly construed T.M.A. Pai and concluded that acceptance of aid by a minority institution takes away its right to claim immunity from interference and therefore the State can lay down any regulation governing the conditions of service of employees of aided minority institutions ignoring the constitutional guarantee under Article 30(1). For this purpose, the High Court relied on the observations in paras 72 and 73 of T.M.A. Pai(supra).

After extracting paras 72 and 73, the Supreme Court proceeded to observe :-

> But the aforesaid observations in paras 72 and 73 were not made with reference to aided minority educational institutions. The observations in para 72 were intended for aided non-minority private professional institutions. The observations in para 73 were made in the context of aided non-minority non-professional private institutions. The position of minority educational institutions securing aid from the State or its agencies was considered in paras 80 to 155, wherein it was clearly held that receipt of State aid does not annihilate the right guaranteed to minorities to establish and administer educational institutions of their choice under Article 30(1).
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> . . .
>
> 19. The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:
>
> (The portions relevant for present purpose are extracted)
>
> (i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:

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(a) to choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

(b) to appoint teaching staff (teachers/lecturers and Headmasters/ Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees; (c) to admit eligible students of their choice and to set up a reasonable fee structure;

(d) to use its properties and assets for the benefit of the institution.

. . .

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection.

...

20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of the State funds. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well-qualified professional teachers. An institution can have the services of good qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff.

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21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in T.M.A. Pai. The State can prescribe:

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
(ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,
(iii) a mechanism for redressal of the grievances of the employees,
(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

. . .

23. In State of Kerala v. Very Rev. Mother Provincial this Court upheld the decisions of the Kerala High Court declaring sub-sections (1), (2) and (3) of Section 53 of the Kerala University Act, 1969 relating to appointment of Principals were ultra vires Article 30(1) in respect of minority institutions. This Court affirmed the following findings of the High Court (reported in 1969 Kerala Law Times 749, Very Rev. Mother Provincial v. State of Kerala without independently considering the same:

> "The principal of a college is, as Section 2 (12) recognises, the head of the college, and, the post of the principal is of pivotal importance in the life of a college; around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching; and the right to choose the principal is perhaps the most important facet of the right to administer a college. The imposition of any trammel thereon—except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself—cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution , and, for the reasons we have already given, by Article 19(1)(f) as well. To hold otherwise would be to make the rights 'a teasing

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illusion, a promise of unreality'. Provision may, of course, be made to ensure that only proper persons are appointed to the post of principal; the qualifications necessary may be prescribed, and the mode of selection for the purpose of securing the best men may be laid down. But to go beyond that and place any further fetter on the choice would be an unreasonable interference with the right of management. Therefore, so far as the post of principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance, and the prospects of advancement of the staff must yield to it . The management must have as wide a field of choice as possible; yet sub-section (2) of Section 53 restricts the choice to the teachers of the college or of all the colleges, as the case may be, and enables the appointment of an outsider only if there is no suitable person in such college or colleges. That might well have the result of condemning the post to a level of dull mediocrity. A provision by which an outsider is to be appointed, or a junior member of the staff preferred to a senior member, only if he is of superior merit, the assessment of which must largely be left to the management, is understandable; but a provision which compels the management to appoint only a teacher of the college (or colleges) unless it pronounces all the teachers unsuitable, is clearly in derogation of the powers of the management, and not calculated to further the interest of the institution. … But we might say that there can be no objection to the appointment of the principal as of any other member of the staff being subject to the approval of some authority of the University so long as disapproval can be only on the ground that the person appointed has not the requisite qualifications. Also that if disapproval is not to be only on some such stated ground, but is left entirely to the will and pleasure of the appointing authority, that would be to deprive the educational agency of its power of appointment and would be bad for offending Article 19(1)(f) and Article 30(1)."

24. The importance of the right to appointment of Principals/ Headmasters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in St. Xavier (supra) thus:

"182 . It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall

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assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution . … So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them." (Emphasis added)

Ultimately, the Supreme Court allowed the appeal and set aside the decision of the High Court.

12. Even though the aforesaid decision was relating to appointment of Principal, it is evident that same logic and ratio would be applicable to the appointment of teachers. As a matter of fact, in AIR 1974 SC 1389 = (1974)1 SCC 717 (THE AHMEDABAD ST. XAVIER'S COLLEGE SOCIETY v. STATE OF GUJARAT), while considering the right of the minority institution to appoint its own teachers, it was observed :-

"103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)."

13. The aforesaid observation was cited with approval in TMA PAI FOUNDATION'S CASE reported in (2002) 8 SCC 481. In para 161 of the aforesaid decision, it was observed :-

"161. ... A. So far as the statutory provisions regulation the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the condition of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

...

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and

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other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for which aid is provided by the State, without interfering with the overall administrative control of the management over the staff."

(Emphasis added)

14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in (2007) 1 SCC 386 (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned.

16. Even assuming that Rule 15(4) of the Rules is applicable and therefore the Management had to follow such procedure, there is no requirement in the Rule nor there is any judicial pronouncement laying down that promotion has to be made only on the basis of seniority. As indicated in the Rule itself, only when a suitable candidate possess the qualification is available from the staff, his case can be considered. In the present case, the Management had given an option to Respondent No.1 to participate in the interview. This was obviously with a view to assess the merit of Respondent No.1. It is no doubt true that simultaneously the Management had also given opportunity to outsiders to participate in the interview. But, merely because of that, it cannot be said that inservice candidates' right had been violated. It is quite possible to hold that the Management in order to avoid delay may think of simultaneously interviewing inservice candidates along with the outsiders and when inservice candidate is found meritorious, such candidate is required to be preferred where Rule 15(4) is applicable. However, merely because such candidate is being interviewed along with other outsiders may not be a factor to vitiate the selection.

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17. In the present case, the learned single Judge has given a direction for appointment of Respondent No.1. Even assuming that Rule 15(4) of the Rules would have been applicable, in that case, the Management could have been directed to hold a fresh selection and under no circumstances a positive direction could have been issued for giving appointment to Respondent No.1 without assessment of her merit by the competent authority, namely, the Management. It is no doubt true that the learned single Judge has referred to the so called merit of Respondent No.1, but that was a matter which was required to be left to the Management to assess and the Court obviously should not have substituted its own wisdom.

18. For the aforesaid reasons, the order of the learned single Judge is set aside and the appeal is allowed and the writ petition is dismissed. No costs.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Chief Educational Officer,
Tuticorin - 1.

+1 cc to The Government Pleader Sr.No.59156.

+1 cc to Mr.D.Hari Paranthaman, Advocate Sr.No.59180.

+2 ccs to Mr.M.Joseph Thatheus Jerome, Advocate Sr.No.58874,59275.

TEJ(CO)
dcp/6.10 W.A.NO.367/2007

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